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11 INLAND WESTERN MDS PORTFOLIO, LLC

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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

LARRY McIVER,

Plaintiff,

vs.

TARGET CORPORATION dba TARGET  
#274; COST PLUS, INC. dba COST PLUS  
WORLD MARKET #145; LA SALSA,  
INC. dba LA SALSA #93; APPLEBEE'S  
RESTAURANTS WEST, LLC dba  
APPLEBEE'S NEIGHBORHOOD BAR &  
GRILL #5711; TOYS 'R' US -  
DELAWARE, INC. dba TOYS 'R' US  
#5633; PARTY CITY CORPORATION  
dba PARTY CITY OF ESCONDIDO #445;  
INLAND WESTERN MDS PORTFOLIO,  
LLC,

Defendants.

CASE NO. 08 CV 0132 IEG (WMc)

**INLAND WESTERN MDS PORTFOLIO,  
LLC'S ANSWER TO LARRY McIVER'S  
COMPLAINT; DEMAND FOR JURY  
TRIAL**

1 Defendant INLAND WESTERN MDS PORTFOLIO, LLC (“Defendant”) hereby answers the  
2 Complaint filed by LARRY McIVER (“Plaintiff”) as follows:

3 1. Answering paragraph 1 of the Complaint, paragraph 1 contains legal conclusions and  
4 legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
5 necessary, Defendant denies each and every averment contained in paragraph 1.

6 2. Answering paragraph 2 of the Complaint, paragraph 2 contains legal conclusions and  
7 legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
8 necessary, Defendant denies each and every averment contained in paragraph 2.

9 3. Answering Paragraph 3 of the Complaint, Defendant admits only that original  
10 jurisdiction in this Court would appear to be appropriate pursuant to 28 U.S.C. §§ 1331 and 1334 for  
11 violations of the Americans with Disabilities Act. Defendant denies each and every other allegation of  
12 this paragraph.

13 4. Answering Paragraph 4 of the Complaint, Defendant denies each and every averment  
14 contained in paragraph 4.

15 5. Answering Paragraph 5 of the Complaint, Defendant admits only that Plaintiff’s claims  
16 appear to be authorized pursuant to 28 U.S.C. §§ 2201 and 2202.

17 6. Answering Paragraph 6 of the Complaint, Defendant admits only that venue of this Court  
18 would appear to be appropriate pursuant to 28 U.S.C. § 1391(b) and (c).

19 7. Answering Paragraph 7 of the Complaint, Defendant lacks the information and  
20 knowledge necessary to form a belief as to Plaintiff’s allegations, and on that basis denies the  
21 allegations.

22 8. Answering paragraph 8 of the Complaint, Defendant lacks the information and  
23 knowledge necessary to form a belief as to Plaintiff’s allegations, and on that basis denies the  
24 allegations.

25 9. Answering paragraph 9 of the Complaint, Defendant lacks the information and  
26 knowledge necessary to form a belief as to Plaintiff’s allegations, and on that basis denies the  
27 allegations.

1           10.     Answering paragraph 10 of the Complaint, Defendant lacks the information and  
2 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
3 allegations.

4           11.     Answering paragraph 11 of the Complaint, Defendant lacks the information and  
5 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
6 allegations.

7           12.     Answering paragraph 13 of the Complaint, Defendant admits that Mervyns' Department  
8 is a lessee of the facility and that it is a California corporation, authorized to do business in California.

9           13.     Answering paragraph 12 of the Complaint, Defendant lacks the information and  
10 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
11 allegations.

12          14.     Answering paragraph 14 of the Complaint, Defendant lacks the information and  
13 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
14 allegations.

15          15.     Answering paragraph 15 of the Complaint, Defendant lacks the information and  
16 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
17 allegations.

18          16.     Answering paragraph 16 of the Complaint, Defendant lacks the information and  
19 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
20 allegations.

21          17.     Answering paragraph 17 of the Complaint, Defendant lacks the information and  
22 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
23 allegations.

24          18.     Answering paragraph 18 of the Complaint, Defendant lacks the information and  
25 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
26 allegations.

27          19.     Answering paragraph 19 of the Complaint, Defendant lacks the information and  
28 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the

1 allegations.

2 20. Answering paragraph 20 of the Complaint, Defendant lacks the information and  
3 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
4 allegations.

5 21. Answering paragraph 21 of the Complaint, Defendant admits that the Mervyn's  
6 Department operates numerous stores in Southern California that are open to the general public.

7 22. Answering paragraph 22 of the Complaint, Defendant lacks the information and  
8 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
9 allegations.

10 23. Answering paragraph 23 of the Complaint, Defendant lacks the information and  
11 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
12 allegations.

13 24. Answering paragraph 24 of the Complaint, Defendant denies each and every averment  
14 asserted against Defendant as contained in paragraph 24, as to the averments against other defendants,  
15 Defendant lacks the information and knowledge necessary to form a belief as to Plaintiffs' averments,  
16 and on that basis denies the averments.

17 25. Answering paragraph 25 of the Complaint, Defendant lacks the information and  
18 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
19 allegations.

20 26. Answering paragraph 26 of the Complaint, Defendant lacks the information and  
21 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
22 allegations.

23 27. Answering paragraph 27 of the Complaint, Defendant lacks the information and  
24 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
25 allegations.

26 28. Answering paragraph 28 of the Complaint, Defendant lacks the information and  
27 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
28 allegations.

1           29.     Answering paragraph 29 of the Complaint, Defendant lacks the information and  
2 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
3 allegations.

4           30.     Answering paragraph 30 of the Complaint, Defendant lacks the information and  
5 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
6 allegations.

7           31.     Answering paragraph 31 of the Complaint, Defendant lacks the information and  
8 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
9 allegations.

10          32.     Answering paragraph 32 of the Complaint, Defendant lacks the information and  
11 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
12 allegations.

13          33.     Answering paragraph 33 of the Complaint, Defendant lacks the information and  
14 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
15 allegations.

16          34.     Answering paragraph 34 of the Complaint, Defendant lacks the information and  
17 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
18 allegations

19          35.     Answering paragraph 35 of the Complaint, Defendant denies each and every averment as  
20 contained in paragraph 35.

21          36.     Answering paragraph 36 of the Complaint, Defendant denies each and every averment as  
22 contained in paragraph 36.

23          37.     Answering paragraph 37 of the Complaint, Defendant lacks the information and  
24 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
25 allegations.

26          38.     Answering paragraph 38 of the Complaint, Defendant lacks the information and  
27 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
28 allegations.

1           39.     Answering paragraph 39 of the Complaint, Defendant lacks the information and  
2 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
3 allegations.

4           40.     Answering paragraph 40 of the Complaint, Defendant lacks the information and  
5 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
6 allegations.

7           41.     Answering paragraph 41 of the Complaint, Defendant lacks the information and  
8 knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis denies the  
9 allegations.

10          42.     Paragraphs 42 to 56 of the Complaint do not pertain to this answering Defendant and  
11 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
12 allegations, and on that basis denies the allegations.

13          43.     Answering paragraph 57 of the Complaint, Defendant denies each and every averment as  
14 contained in paragraph 57.

15          44.     Answering paragraph 58 of the Complaint, Defendant denies each and every averment as  
16 contained in paragraph 58.

17          45.     Answering paragraph 59 of the Complaint, Defendant denies each and every averment as  
18 contained in paragraph 59.

19          46.     Paragraphs 60 to 65 of the Complaint do not pertain to this answering Defendant and  
20 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
21 allegations, and on that basis denies the allegation.

22          47.     In response to Paragraph 66 of the Complaint, Defendant re-alleges and incorporates  
23 herein by this reference Paragraphs 1 through 46 of this Answer as set forth above.

24          48.     **Paragraphs 67 to 82** of the Complaint do not pertain to this answering Defendant and  
25 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
26 allegations, and on that basis no response is necessary.

27          49.     In response to Paragraph 83 of the Complaint, Defendant re-alleges and incorporates  
28 herein by this reference Paragraphs 1 through 48 of this Answer as set forth above.

1           50.     **Paragraphs 84 to 89** of the Complaint do not pertain to this answering Defendant and  
2 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
3 allegations, and on that basis no response is necessary.

4           51.     In response to Paragraph 90 of the Complaint, Defendant re-alleges and incorporates  
5 herein by this reference Paragraphs 1 through 50 of this Answer as set forth above.

6           52.     **Paragraphs 91 to 97** of the Complaint do not pertain to this answering Defendant and  
7 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
8 allegations, and on that basis no response is necessary.

9           53.     In response to Paragraph 98 of the Complaint, Defendant re-alleges and incorporates  
10 herein by this reference Paragraphs 1 through 52 of this Answer as set forth above.

11          54.     **Paragraphs 99 to 102** of the Complaint do not pertain to this answering Defendant and  
12 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
13 allegations, and on that basis no response is necessary.

14          55.     In response to Paragraph 103 of the Complaint, Defendant re-alleges and incorporates  
15 herein by this reference Paragraphs 1 through 54 of this Answer as set forth above.

16          56.     **Paragraphs 104 to 119** of the Complaint do not pertain to this answering Defendant and  
17 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
18 allegations, and on that basis no response is necessary.

19          57.     In response to Paragraph 120 of the Complaint, Defendant re-alleges and incorporates  
20 herein by this reference Paragraphs 1 through 56 of this Answer as set forth above.

21          58.     **Paragraphs 121 to 126** of the Complaint do not pertain to this answering Defendant and  
22 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
23 allegations, and on that basis no response is necessary.

24          59.     In response to Paragraph 127 of the Complaint, Defendant re-alleges and incorporates  
25 herein by this reference Paragraphs 1 through 58 of this Answer as set forth above.

26          60.     **Paragraphs 128 to 134** of the Complaint do not pertain to this answering Defendant and  
27 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
28 allegations, and on that basis no response is necessary.

61. In response to Paragraph 135 of the Complaint, Defendant re-alleges and incorporates herein by this reference Paragraphs 1 through 60 of this Answer as set forth above.

62. **Paragraphs 136 to 139** of the Complaint do not pertain to this answering Defendant and therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis no response is necessary.

63. In response to Paragraph 140 of the Complaint, Defendant re-alleges and incorporates herein by this reference Paragraphs 1 through 62 of this Answer as set forth above.

64. **Paragraphs 141 to 156** of the Complaint do not pertain to this answering Defendant and therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis no response is necessary.

65. In response to Paragraph 157 of the Complaint, Defendant re-alleges and incorporates herein by this reference Paragraphs 1 through 64 of this Answer as set forth above.

66. **Paragraphs 158 to 163** of the Complaint do not pertain to this answering Defendant and therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis no response is necessary.

67. In response to Paragraph 164 of the Complaint, Defendant re-alleges and incorporates herein by this reference Paragraphs 1 through 66 of this Answer as set forth above.

68. **Paragraphs 165 to 171** of the Complaint do not pertain to this answering Defendant and therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis no response is necessary.

69. In response to Paragraph 172 of the Complaint, Defendant re-alleges and incorporates herein by this reference Paragraphs 1 through 68 of this Answer as set forth above.

70. **Paragraphs 173 to 176** of the Complaint do not pertain to this answering Defendant and therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's allegations, and on that basis no response is necessary.

71. In response to Paragraph 177 of the Complaint, Defendant re-alleges and incorporates herein by this reference Paragraphs 1 through 70 of this Answer as set forth above.

72. **Paragraphs 178 to 193** of the Complaint do not pertain to this answering Defendant and



1 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
2 allegations, and on that basis no response is necessary.

3 73. In response to Paragraph 194 of the Complaint, Defendant re-alleges and incorporates  
4 herein by this reference Paragraphs 1 through 72 of this Answer as set forth above.

5 74. **Paragraphs 195 to 200** of the Complaint do not pertain to this answering Defendant and  
6 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
7 allegations, and on that basis no response is necessary.

8 75. In response to Paragraph 201 of the Complaint, Defendant re-alleges and incorporates  
9 herein by this reference Paragraphs 1 through 74 of this Answer as set forth above.

10 76. **Paragraphs 202 to 208** of the Complaint do not pertain to this answering Defendant and  
11 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
12 allegations, and on that basis no response is necessary.

13 77. In response to Paragraph 209 of the Complaint, Defendant re-alleges and incorporates  
14 herein by this reference Paragraphs 1 through 76 of this Answer as set forth above.

15 78. **Paragraphs 210 to 213** of the Complaint do not pertain to this answering Defendant and  
16 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
17 allegations, and on that basis no response is necessary.

18 79. In response to Paragraph 214 of the Complaint, Defendant re-alleges and incorporates  
19 herein by this reference Paragraphs 1 through 78 of this Answer as set forth above.

20 80. **Paragraphs 215 to 230** of the Complaint do not pertain to this answering Defendant and  
21 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
22 allegations, and on that basis no response is necessary.

23 81. In response to Paragraph 231 of the Complaint, Defendant re-alleges and incorporates  
24 herein by this reference Paragraphs 1 through 80 of this Answer as set forth above.

25 82. **Paragraphs 232 to 237** of the Complaint do not pertain to this answering Defendant and  
26 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
27 allegations, and on that basis no response is necessary.

28 83. In response to Paragraph 238 of the Complaint, Defendant re-alleges and incorporates

1 herein by this reference Paragraphs 1 through 82 of this Answer as set forth above.

2 84. **Paragraphs 239 to 245** of the Complaint do not pertain to this answering Defendant and  
3 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
4 allegations, and on that basis no response is necessary.

5 85. In response to Paragraph 246 of the Complaint, Defendant re-alleges and incorporates  
6 herein by this reference Paragraphs 1 through 84 of this Answer as set forth above.

7 86. **Paragraphs 247 to 250** of the Complaint do not pertain to this answering Defendant and  
8 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
9 allegations, and on that basis no response is necessary.

10 87. In response to Paragraph 251 of the Complaint, Defendant re-alleges and incorporates  
11 herein by this reference Paragraphs 1 through 86 of this Answer as set forth above.

12 88. Answering paragraph 252 of the Complaint, paragraph 252 contains legal conclusions  
13 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
14 necessary, Defendant denies each and every averment contained in paragraph 252.

15 89. Answering paragraph 253 of the Complaint, Defendant denies each and every averment  
16 contained in paragraph 253.

17 90. Answering paragraph 254 of the Complaint, paragraph 254 contains legal conclusions  
18 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
19 necessary, Defendant denies each and every averment contained in paragraph 254.

20 91. Answering paragraph 255 of the Complaint, paragraph 255 contains legal conclusions  
21 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
22 necessary, Defendant denies each and every averment contained in paragraph 255.

23 92. Answering paragraph 256 of the Complaint, Defendant denies each and every averment  
24 contained in paragraph 256.

25 93. Answering paragraph 257 of the Complaint, Defendant denies each and every averment  
26 contained in paragraph 257.

27 94. Answering paragraph 258 of the Complaint, Defendant admits that the store opened after  
28 January 1992, but denies all other averments.

1           95.     Answering paragraph 259 of the Complaint, paragraph 259 contains legal conclusions  
2 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
3 necessary, Defendant denies each and every averment contained in paragraph 259.

4           96.     Answering paragraph 260 of the Complaint, Defendant denies each and every averment  
5 contained in paragraph 257.

6           97.     Answering paragraph 261 of the Complaint, Defendant admits that the store was  
7 modified after January 1992, but denies all other averments.

8           98.     Answering paragraph 262 of the Complaint, paragraph 262 contains legal conclusions  
9 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
10 necessary, Defendant denies each and every averment contained in paragraph 262.

11          99.     Answering paragraph 263 of the Complaint, Defendant denies each and every averment  
12 contained in paragraph 263.

13          100.    Answering paragraph 264 of the Complaint, paragraph 264 contains legal conclusions  
14 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
15 necessary, Defendant denies each and every averment contained in paragraph 264.

16          101.    Answering paragraph 265 of the Complaint, Defendant denies each and every averment  
17 contained in paragraph 265.

18          102.    Answering paragraph 266 of the Complaint, paragraph 266 contains legal conclusions  
19 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
20 necessary, Defendant denies each and every averment contained in paragraph 266.

21          103.    Answering paragraph 267 of the Complaint, paragraph 267 contains legal conclusions  
22 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
23 necessary, Defendant denies each and every averment contained in paragraph 267.

24          104.    In response to Paragraph 268 of the Complaint, Defendant re-alleges and incorporates  
25 herein by this reference Paragraphs 1 through 103 of this Answer as set forth above.

26          105.    Answering paragraph 269 of the Complaint, paragraph 269 contains legal conclusions  
27 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
28 necessary, Defendant denies each and every averment contained in paragraph 269.

1           106. Answering paragraph 270 of the Complaint, paragraph 270 contains legal conclusions  
2 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
3 necessary, Defendant denies each and every averment contained in paragraph 270.

4           107. Answering paragraph 271 of the Complaint, paragraph 271 contains legal conclusions  
5 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
6 necessary, Defendant denies each and every averment contained in paragraph 271.

7           108. Answering paragraph 272 of the Complaint, Defendant denies each and every averment  
8 contained in paragraph 272.

9           109. Answering paragraph 273 of the Complaint, paragraph 273 contains legal conclusions  
10 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
11 necessary, Defendant denies each and every averment contained in paragraph 273.

12           110. Answering paragraph 274 of the Complaint, paragraph 274 contains legal conclusions  
13 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
14 necessary, Defendant denies each and every averment contained in paragraph 274.

15           111. In response to Paragraph 275 of the Complaint, Defendant re-alleges and incorporates  
16 herein by this reference Paragraphs 1 through 110 of this Answer as set forth above.

17           112. Answering paragraph 276 of the Complaint, paragraph 276 contains legal conclusions  
18 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
19 necessary, Defendant denies each and every averment contained in paragraph 276.

20           113. Answering paragraph 277 of the Complaint, paragraph 277 contains legal conclusions  
21 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
22 necessary, Defendant denies each and every averment contained in paragraph 277.

23           114. Answering paragraph 278 of the Complaint, paragraph 278 contains legal conclusions  
24 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
25 necessary, Defendant denies each and every averment contained in paragraph 278.

26           115. Answering paragraph 279 of the Complaint, Defendant denies each and every averment  
27 contained in paragraph 279.

28           116. Answering paragraph 280 of the Complaint, Defendant denies each and every averment

1 contained in paragraph 280.

2 117. Answering paragraph 281 of the Complaint, paragraph 281 contains legal conclusions  
3 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
4 necessary, Defendant denies each and every averment contained in paragraph 281.

5 118. Answering paragraph 282 of the Complaint, paragraph 282 contains legal conclusions  
6 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
7 necessary, Defendant denies each and every averment contained in paragraph 282.

8 119. In response to Paragraph 283 of the Complaint, Defendant re-alleges and incorporates  
9 herein by this reference Paragraphs 1 through 118 of this Answer as set forth above.

10 120. Answering paragraph 284 of the Complaint, paragraph 284 contains legal conclusions  
11 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
12 necessary, Defendant denies each and every averment contained in paragraph 284.

13 121. Answering paragraph 285 of the Complaint, paragraph 285 contains legal conclusions  
14 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
15 necessary, Defendant denies each and every averment contained in paragraph 285.

16 122. Answering paragraph 286 of the Complaint, paragraph 286 contains legal conclusions  
17 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
18 necessary, Defendant denies each and every averment contained in paragraph 286.

19 123. Answering paragraph 287 of the Complaint, paragraph 287 contains legal conclusions  
20 and legal argument that Defendant is not required to admit or deny. To the extent a response is deemed  
21 necessary, Defendant denies each and every averment contained in paragraph 287.

22 124. In response to Paragraph 288 of the Complaint, Defendant re-alleges and incorporates  
23 herein by this reference Paragraphs 1 through 123 of this Answer as set forth above.

24 125. **Paragraphs 289 to 304** of the Complaint do not pertain to this answering Defendant and  
25 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
26 allegations, and on that basis no response is necessary.

27 126. In response to Paragraph 305 of the Complaint, Defendant re-alleges and incorporates  
28 herein by this reference Paragraphs 1 through 125 of this Answer as set forth above.

1           127.   **Paragraphs 306 to 311** of the Complaint do not pertain to this answering Defendant and  
2 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
3 allegations, and on that basis no response is necessary.

4           128.   In response to Paragraph 312 of the Complaint, Defendant re-alleges and incorporates  
5 herein by this reference Paragraphs 1 through 127 of this Answer as set forth above.

6           129.   **Paragraphs 313 to 319** of the Complaint do not pertain to this answering Defendant and  
7 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
8 allegations, and on that basis no response is necessary.

9           130.   In response to Paragraph 320 of the Complaint, Defendant re-alleges and incorporates  
10 herein by this reference Paragraphs 1 through 129 of this Answer as set forth above.

11           131.   **Paragraphs 321 to 324** of the Complaint do not pertain to this answering Defendant and  
12 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
13 allegations, and on that basis no response is necessary.

14           132.   In response to Paragraph 325 of the Complaint, Defendant re-alleges and incorporates  
15 herein by this reference Paragraphs 1 through 131 of this Answer as set forth above.

16           133.   **Paragraphs 326 to 341** of the Complaint do not pertain to this answering Defendant and  
17 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
18 allegations, and on that basis no response is necessary.

19           134.   In response to Paragraph 342 of the Complaint, Defendant re-alleges and incorporates  
20 herein by this reference Paragraphs 1 through 133 of this Answer as set forth above.

21           135.   **Paragraphs 343 to 348** of the Complaint do not pertain to this answering Defendant and  
22 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
23 allegations, and on that basis no response is necessary.

24           136.   In response to Paragraph 342 of the Complaint, Defendant re-alleges and incorporates  
25 herein by this reference Paragraphs 1 through 135 of this Answer as set forth above.

26           137.   **Paragraphs 349 to 356** of the Complaint do not pertain to this answering Defendant and  
27 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
28 allegations, and on that basis no response is necessary.

1 138. In response to Paragraph 357 of the Complaint, Defendant re-alleges and incorporates  
2 herein by this reference Paragraphs 1 through 137 of this Answer as set forth above.

3 139. **Paragraphs 358 to 361** of the Complaint do not pertain to this answering Defendant and  
4 therefore Defendant lacks the information and knowledge necessary to form a belief as to Plaintiff's  
5 allegations, and on that basis no response is necessary.

6 **PRAYER**

7 140. Defendant denies that Plaintiff is entitled to the relief he seeks, or any relief whatsoever.

8 **ADDITIONAL DEFENSES**

9 141. As separate and additional defenses, Defendant alleges as follows:

10 **FIRST AFFIRMATIVE DEFENSE**

11 (Failure to State a Claim)

12 142. The Complaint, and each and every claim therein, fails to state a claim for which relief  
13 can be granted and should, therefore, be dismissed.

14 **SECOND AFFIRMATIVE DEFENSE**

15 (Failure to Mitigate Damages)

16 143. Plaintiff failed to properly mitigate his alleged damages and therefore is precluded from  
17 recovering those alleged damages.

18 **THIRD AFFIRMATIVE DEFENSE**

19 (Comparative Negligence)

20 144. Plaintiff's alleged damages and the occurrences alleged in the Complaint were caused by  
21 the negligence and/or fault of other persons or entities, whether or not parties to this action, and  
22 Defendant's alleged liability should be reduced accordingly.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 (Recovery of Prevailing Party Attorney's Fees)

25 145. Pursuant to 42 U.S.C. § 12205, in the event that Defendant prevails in this action,  
26 Defendant should be awarded its reasonable attorney's fees and costs incurred in the defense of this  
27 action.



**FIFTH AFFIRMATIVE DEFENSE**

(Privilege)

146. Defendant's conduct was privileged because it was undertaken pursuant to the terms of the applicable laws, regulations, orders, and approvals relating to building construction and/or fire safety and public safety.

**SIXTH AFFIRMATIVE DEFENSE**

(Building Permits)

147. The Complaint and all claims alleged therein are barred by the issuance by local building authorities of appropriate building permits and Certificates of Occupancy for the facility at issue.

**SEVENTH AFFIRMATIVE DEFENSE**

(Good Faith Reliance Upon Local Building Authorities)

148. Plaintiff's Complaint and each claim alleged therein are barred by Defendant's good faith reliance upon reasonable interpretations of California law by local building authorities and issuance of appropriate building permits and Certificates of Occupancy for the facility at issue.

**EIGHTH AFFIRMATIVE DEFENSE**

(Undue Burden)

149. Insofar as the Defendant has not made the alterations to the facility at issue, which Plaintiff contends should have been made, those changes were not and are not required under federal or California law, and any requirements to make those changes would impose an undue burden upon Defendant.

**NINTH AFFIRMATIVE DEFENSE**

(Estoppel)

150. Plaintiff is estopped by his conduct from recovering any relief under the Complaint.

**TENTH AFFIRMATIVE DEFENSE**

(Waiver)

151. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.



**ELEVENTH AFFIRMATIVE DEFENSE**

(Lack of Standing)

152. Plaintiff lacks standing to pursue his alleged claims.

**TWELFTH AFFIRMATIVE DEFENSE**

(Preemption)

153. Plaintiff's state law claim is preempted by federal law.

**THIRTEENTH AFFIRMATIVE DEFENSE**

(Moot)

154. Plaintiff's alleged claims are barred, in whole or in part, because the challenged conditions have been remedied and thus, Plaintiff will not again be subjected to the same wrongful conduct by Defendant.

**FOURTEENTH AFFIRMATIVE DEFENSE**

(Defenses Under Federal Rules of Civil Procedure)

155. Plaintiff's claims may be barred by any or all of the affirmative defenses contemplated by Rules 8 and 12 of the Federal Rules of Civil Procedure. The extent to which Plaintiff's claims may be barred cannot be determined until Defendant has an opportunity to complete discovery. Therefore, Defendant incorporates all such affirmative defenses as though fully set forth herein.

**FIFTEENTH AFFIRMATIVE DEFENSE**

(Removal of Architectural Barriers Were Not Readily Achievable)

156. Any allegedly wrongful acts or omissions performed by Defendant or its agents, if there were any, do not subject Defendant to liability because the removal of alleged architectural barriers was not readily achievable.

**SIXTEENTH AFFIRMATIVE DEFENSE**

(Misapplication of Section 51 of the California Civil Code)

157. Plaintiff is barred from recovery under California Civil Code Section 51 because such section does not apply to the alleged conduct at issue.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

(Defendant Provided Services Via Alternative Methods)

158. Any allegedly wrongful acts or omissions performed by Defendant or its agents, if there were any, do not subject Defendant to liability because Defendant accommodated Plaintiff's alleged disability by providing services via alternative methods other than the removal of alleged architectural barriers.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

(Legitimate Business Justifications)

159. The Complaint, and each and every purported claim alleged therein, fails to state facts sufficient to constitute a claim against this Defendant because any actions taken with respect to Plaintiff were for legitimate, non-discriminatory business reasons unrelated to Plaintiff's alleged disability or other asserted protected status.

**NINETEENTH AFFIRMATIVE DEFENSE**

(No Damages)

160. Defendant is informed and believes and based thereon alleges that Plaintiff has not suffered any damage as a result of any actions taken by Defendant, and Plaintiff is thereby barred from asserting any claim against Defendant.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

(Good Faith)

161. Defendant and its agents acted reasonably and in good faith at all times material herein, based on all relevant facts and circumstances known by them at the time that they acted. Accordingly, Plaintiff is barred, in whole or in part, from any recovery in this action.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

(No Standing)

162. Plaintiff's alleged claims are barred, in whole or in part, because Plaintiff lacks standing under the Americans with Disabilities Act.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

(Express Indemnity)

163. The Complaint and each and every purported claim alleged therein, is barred by the existence of an express contractual indemnity in favor of Defendant.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

(Indemnity)

164. Any and all damages sustained by Plaintiff were proximately caused and contributed to by the superseding negligence or other tortious conduct of third parties and, accordingly, Defendant is entitled to total or partial indemnity from said third parties.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

(Reservation of Defenses)

165. Defendant alleges all other defenses that may potentially become available as a result of information developed through discovery or trial.

**WHEREFORE**, Defendant prays that this Court enter a judgment as follows:

1. That the Complaint be dismissed with prejudice and that judgment be entered in favor of Defendant;
2. That Plaintiff take nothing by way of his Complaint;
3. That Defendant be awarded its costs of suit incurred in defense of this action, including its reasonable attorney's fees; and
4. For such further and other relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(a), Defendant demands trial by jury of any and all issues triable of right by a jury

DATED: February 19, 2008

GREENBERG TRAURIG, LLP

By: /s/ Eudeen Y. Chang  
GREGORY F. HURLEY  
EUDEEN Y. CHANG  
Attorneys for INLAND WESTERN MDS  
PORTFOLIO, LLC

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is **3161 Michelson Drive, Suite 1000, Irvine, CA 92612.**

On the below date, I served the **INLAND WESTERN MDS PORTFOLIO, LLC'S ANSWER TO LARRY McIVER'S COMPLAINT; DEMAND FOR JURY TRIAL** with the Clerk of the United States District Court for the Southern District of California, using the CM/ECF System. The Court's CM/ECF System will send an email notification of the foregoing filing to the following parties and counsel of record who are registered with the Court's CM/ECF System:

**On all parties identified for Notice of Electronic Filing generated  
by the Court's CM/ECF system under the above-referenced case caption**

☒ **(BY ELECTRONIC SERVICE VIA CM/ECF SYSTEM)**

In accordance with the electronic filing procedures of this Court, service has been effected on the aforesaid party(s) above, whose counsel of record is a registered participant of CM/ECF, via electronic service through the CM/ECF system.

☒ **(FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct, and that I am employed at the office of a member of the bar of this Court at whose direction the service was made.

Executed on February 19, 2008, at Irvine, California.

/s/Eudeen Y. Chang  
EUDEEN Y. CHANG